

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

THE ESTATE OF JAMES FRANKLIN PERRY, et al.
Plaintiffs,

v.

CHERYL WENZEL, R.N., et al,
Defendants.

Case No.12-CV-0664

PLAINTIFFS' SECOND L.R. 7(H) MOTION TO SET TRIAL DATE

NOW COME the Plaintiffs, the Estate of James Franklin Perry and James Franklin Perry, Jr. (a minor), by and through their attorneys, respectfully requesting this case be set for trial:

1. The parties have been at issue since June 8, 2012, stemming from James Perry's in-custody death on September 13, 2010. His son, James Perry, Jr., was nine years old when his father died on the concrete floor of the County's jail, bound by his arms and legs, a spit mask saturated with blood and sputum over his face, urine and feces about his body and his pants down around his ankles – all of which is documented by video footage.

2. Per this Court's prior order, this matter was set for final pre-trial conference on March 20, 2018, and trial commencing March 26, 2018. (D.213) Those dates were contingent on the declination of the combined defendants' Writs of Certiorari with the U.S. Supreme Court, "[i]f the petition for certiorari has not been addressed prior to the [trial] dates... we will adjust the trial date." (D.219:1)(11-2-17 Status Hrg. Tr. at 3.) The combined defendants' Writs were denied by the U.S. Supreme Court on April 2, 2018.

3. On April 19, 2018, the Court entered an "Amended Trial Scheduling Order" and held, amongst other things, that the matter was set for trial on July 2, 2018, and "The parties and their counsel should note that **no further extensions of the dates set forth herein will be granted for any reason.**" (D.231:2)(emphasis added in the original)

4. At the final status conference on June 26, 2018, the Court set forth the anticipated trial schedule indicating which days would be full trial days and which would not based on the looming holiday. (D.304:7)

5. On June 28, 2018, the Court entered two orders, one of which adjourned the trial date and referred the matter to Magistrate Judge William E. Callahan “to narrow the legal issues and witness list for trial in this case.” (D.299:2)

6. On August 8, 2018, after conducting two in-person conferences with all counsel and considering written submissions, Magistrate Judge Callahan filed his “Report on Referral” and returned the matter to this Court. (D.306)

7. On August 29, 2018, Andrew Jones, Counsel for Defendants Virgo and Wenzel, filed a motion to withdraw (D.308), which was subsequently granted by this Court on September 5, 2018.

WHEREFORE, in accord with the Seventh Circuit’s Decision remanding this matter for trial on thirteen separate defendants, plaintiffs respectfully request a final trial date be calendared at the Court’s earliest convenience.

Dated at Wauwatosa, Wisconsin this 10th day of September, 2018.

Respectfully Submitted,
Attorneys for Plaintiffs

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